



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF D-C-I-D-M-

DATE: JULY 11, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner contends that she is eligible for a national interest waiver under the *Dhanasar* framework. In addition, she asserts that her documents "exceed the preponderance of the evidence standard." With regard to the standard of proof in this matter, a petitioner must establish that she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what she claims is "more likely than not" or "probably" true. To determine whether a petitioner has met her burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification

requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.³ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

With respect to the substantial merit and national importance of the proposed endeavor, the Petitioner indicates that she intends to continue her work as a teacher "in the field of special and inclusive education in the United States, joining educational institutions and non-governmental organizations." She states: "I could provide not only special education classroom services but also help new educators by teaching them effective learning methodologies and strategies for children with intellectual and communication disabilities." In addition, the Petitioner provides a letter from the managing director of [REDACTED] in [REDACTED] stating that his company intends to "hire a professional that will be in charge of coping with special needs children including attention deficit disorder" and expressing "interest in hiring [the Petitioner]." She also presents emails relating to special education teacher positions for which she applied. Lastly, the Petitioner offers a list of schools and institutions where she intends to pursue special education teacher job openings.⁴

The record includes documents that demonstrate the substantial merit of the Petitioner's proposed endeavor. For example, she submits a report entitled [REDACTED] that suggests steps for creating a better quality of life for people with disabilities. The Petitioner also provides

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ The Petitioner holds the foreign equivalent of a U.S. baccalaureate degree in education, and has at least five years of progressive post-baccalaureate experience in her specialty equivalent to an advanced degree under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B).

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about her prospective positions to illustrate the capacity in which she intends to work.

numerous articles discussing teacher shortages in the United States. We find that the Petitioner's proposed work teaching students with special needs and training other educators has substantial merit as it imparts valuable educational benefits and life skills to her pupils and fosters her fellow teachers' professional development.

To evaluate whether the Petitioner's work satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. The relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor. *Id.*

In the present matter, the Petitioner's evidence does not show that her proposed work has broader implications for her field, as opposed to being limited to the students and educators at the school or institution where she intends to teach. While the Petitioner asserts that she will "help new educators by teaching them effective learning methodologies and strategies for children with intellectual and communication disabilities," the record does not demonstrate that her proposed work will affect instructional practices, curricula, or teaching guidelines in field of special education more broadly. Furthermore, the reported shortage of special education teachers in the United States does not render the work of an individual teacher nationally important under the *Dhanasar* framework.⁵ In general, the value of qualified teachers to U.S. national educational initiatives is collective, and the Petitioner has not shown that her proposed work stands to have wider implications for those initiatives.

The Petitioner's documentation is not sufficient to demonstrate that her proposed endeavor is of national importance. While we acknowledge the merits of her work to develop teaching methodologies and learning strategies for her students with disabilities, the record does not demonstrate that the Petitioner's instructional activities offer benefits that extend beyond her school or institution to impact the field of special education more broadly.⁶ As the Petitioner has not established that her specific endeavor's prospective impact supports a finding of national importance, she has not met the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

⁵ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

⁶ In *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of D-C-I-D-M-*, ID# 1429717 (AAO July 11, 2018)